

1 THE HONORABLE JAMES L. ROBART
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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 ANNA PATRICK, DOUGLAS MORRILL,
10 ROSEANNE MORRILL, LEISA GARRETT,
11 ROBERT NIXON, SAMANTHA NIXON,
12 DAVID BOTTONFIELD, ROSEMARIE
13 BOTTONFIELD, TASHA RYAN, ROGELIO
14 VARGAS, MARILYN DEWEY, PETER
ROLLINS, RACHAEL ROLLINS, KATRINA
BENNY, SARA ERICKSON, GREG LARSON,
and JAMES KING, individually and on behalf of
all others similarly situated,

15 Plaintiffs,

16 v.

17 DAVID L. RAMSEY, III, individually;
18 HAPPY HOUR MEDIA GROUP, LLC, a
Washington limited liability company; and
19 THE LAMPO GROUP, LLC, a Tennessee
20 limited liability company,

21 Defendants.

22 Case No. 2:23-cv-00630

**STIPULATED AGREEMENT
REGARDING DISCOVERY OF
ELECTRONICALLY STORED
INFORMATION AND [PROPOSED]
ORDER**

23 The Parties hereby stipulate to the following provisions regarding the discovery of
24 electronically stored information (“ESI”) in this matter:

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26 STIPULATED AGREEMENT REGARDING
DISCOVERY OF ELECTRONICALLY STORED
INFORMATION AND [PROPOSED] ORDER
(Case No. 2:23-cv-00630) - 1

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1 **A. General Principles**

2 1. An attorney's zealous representation of a client is not compromised by conducting discovery
3 in a cooperative manner. The failure of counsel or the Parties to litigation to cooperate in facilitating
4 and reasonably limiting discovery requests and responses raises litigation costs and contributes to
5 the risk of sanctions.

6 2. The proportionality standard set forth in Fed. R. Civ. P. 26(b)(1) must be applied in
7 each case when formulating a discovery plan. To further the application of the proportionality
8 standard in discovery, requests for production of ESI and related responses should be reasonably
9 targeted, clear, and as specific as possible.

10 3. This Order shall not enlarge or affect the proper scope of discovery in this Action, nor imply
11 that discovery produced under the terms of this Order is properly discoverable, relevant, or
12 admissible in this or in any other litigation. Additionally, this Order does not alter or expand the
13 preservation obligations of the Parties.

14 **B. ESI Disclosures**

15 At a time to be agreed by the Parties, each Party shall disclose:

16 1. Custodians. For each corporate Party, the five custodians most likely to have discoverable
17 ESI in their possession, custody or control. The custodians shall be identified by name, title,
18 connection to the instant litigation, and the type of the information under his/her control.

19 2. Non-custodial Data Sources. A list of non-custodial data sources (e.g. shared drives,
20 servers, etc.), if any, likely to contain discoverable ESI.

21 3. Third-Party Data Sources. A list of third-Party data sources, if any, likely to contain
22 discoverable ESI (e.g. third-Party email and/or mobile device providers, "cloud" storage, etc.)
23 and, for each such source, the extent to which a Party is (or is not) able to preserve information
24 stored in the third-Party data source.

1 4. Inaccessible Data. A list of data sources, if any, likely to contain discoverable ESI
 2 (by type, date, custodian, electronic system or other criteria sufficient to specifically
 3 identify the data source) that a Party asserts is not reasonably accessible under Fed. R. Civ.
 4 P. 26(b)(2)(B).

5 **C. Preservation of ESI**

6 The Parties acknowledge that they have a common law obligation to take reasonable and
 7 proportional steps to preserve discoverable information in the Party's possession, custody or
 8 control. With respect to preservation of ESI, the Parties agree as follows:

9 1. Absent a showing of good cause by the requesting Party, the Parties shall not be required
 10 to modify the procedures used by them in the ordinary course of business to back-up and archive
 11 data; provided, however, that the Parties shall preserve all discoverable ESI in their possession,
 12 custody or control.

13 2. All Parties shall supplement their disclosures in accordance with Rule 26(e) with
 14 discoverable ESI responsive to a particular discovery request or mandatory disclosure where that
 15 data is created after a disclosure or response is made (unless excluded under (C)(3) or (D)(1)-
 16 (2) below).

17 3. Absent a showing of good cause by the requesting Party, the following categories of ESI
 18 need not be preserved:

- 19 a. Deleted, slack, fragmented, or other data only accessible by forensics.
- 20 b. Random access memory (RAM), temporary files, or other ephemeral data that
 are difficult to preserve without disabling the operating system.
- 21 c. On-line access data such as temporary internet files, history, cache, cookies, and the
 like.
- 22 d. Data in metadata fields that are frequently updated automatically, such as last-
 opened dates (see also Section (E)(5)).

- e. Back-up data that are substantially duplicative of data that are more accessible elsewhere.
 - f. Server, system or network logs.
 - g. Data remaining from systems no longer in use that is unintelligible on the systems in use.
 - h. (1) Voicemail messages of the Plaintiffs unrelated to their timeshare(s), Reed Hein, or any defendant; (2) voicemail messages of David Ramsey or the Lampo Group unrelated to Reed Hein or Happy Hour Media Group; or (3) voicemail messages of Happy Hour Media Group unrelated to Reed Hein or the other defendants.
 - i. Data stored on photocopiers, scanners and fax machines;
 - j. Text messages sent and received via telephone, such as SMS or Apple iMessage unrelated to (1) in the case of the Plaintiffs, their timeshare(s), Reed Hein, or any defendant; (2) in the case of David Ramsey or the Lampo Group, Reed Hein or Happy Hour Media Group; or (3) in the case of Happy Hour Media Group, Reed Hein or the other defendants.
 - k. Instant message or “chat” messages which reside solely in the messenger program’s cache or other automatic backup.
 - l. Logs of calls made from cellular or land line phones.
 - m. Electronic data (e.g. email, calendars, contact data, and notes) sent to or from mobile devices (e.g., iPhone, iPad, Android, and Blackberry devices), provided that a copy of all such electronic data is routinely saved elsewhere (such as on a server, laptop, desktop computer, or “cloud” storage).

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1 **D. ESI Discovery Procedures**

2 1. On-site inspection of electronic media. Such an inspection shall not be permitted
 3 absent a demonstration by the requesting Party of specific need and good cause or by agreement
 4 of the Parties.

5 2. Search methodology. The Parties shall timely attempt to reach agreement on
 6 appropriate search terms, or an appropriate computer- or technology-aided methodology, before
 7 any such effort is undertaken. The Parties shall continue to cooperate in revising the
 8 appropriateness of the search terms or computer- or technology-aided methodology.

9 In the absence of agreement on appropriate search terms, or an appropriate computer- or
 10 technology-aided methodology, the following procedures shall apply:

11 a. A producing Party shall disclose the search terms or queries, if any, and
 12 methodology that it proposes to use to locate ESI likely to contain discoverable information. The
 13 Parties shall meet and confer to attempt to reach an agreement on the producing Party's search
 14 terms and/or other methodology.

15 b. If search terms or queries are used to locate ESI likely to contain
 16 discoverable information, a requesting Party is entitled to no more than 5 additional terms or
 17 queries to be used in connection with further electronic searches absent a showing of good cause
 18 or agreement of the Parties. The 5 additional terms or queries, if any, must be provided by the
 19 requesting Party within 14 days of receipt of the producing Party's production.

20 c. Focused terms and queries should be employed; broad terms or queries,
 21 such as product and company names, generally should be avoided. Absent a showing of good
 22 cause, each search term or query returning more than 250 megabytes of data are presumed to be
 23 overbroad, excluding Microsoft PowerPoint files, image and audio files, and similarly large file
 24 types.

1 d. The producing Party shall search both non-custodial data sources and ESI
 2 maintained by the custodians identified above.

3 e. The mere fact that a document is hit or identified by the application of any
 4 agreed upon search terms does not mean that such document is necessarily responsive to any
 5 propounded discovery request or is otherwise relevant to this litigation. Determinations of
 6 discoverability, responsiveness and privilege shall be made by the Producing Party.

7 3. De-duplication. A Party is only required to produce a single copy of a responsive
 8 Document, and a Party shall make reasonable efforts to de-duplicate responsive Documents and
 9 ESI (based on MD5 or SHA-1 Hash Values at the document level) across custodians. For emails
 10 with attachments, the Hash Value shall be generated based on the parent-child document grouping,
 11 and only e-mail messages in which the parent document and all attachments are exactly the same
 12 will be considered duplicates. However, metadata identifying all custodians in possession of each
 13 document that is removed as a duplicate must be produced in the “CUSTODIAN” field in the
 14 production Load File. In addition, outlook.ost files are excluded from processing as duplicative of
 15 outlook.pst files.

16 4. Use of Technology-Assisted Review or Similar Advanced Analytics. The parties
 17 may use technology-assisted review or similar advanced analytics (collectively, “TAR”) to assist
 18 in identifying documents to be produced in response to requests for production.

19 5. Email Thread Suppression. Each Party may also suppress e-mails in such a way as
 20 to eliminate earlier or incomplete chains of e-mails and redundant attachments and produce only
 21 the most complete iteration of an e-mail chain. Each Party shall preserve family relationships when
 22 engaging in email thread suppression in instances where an earlier or incomplete email chain
 23 contains a unique attachment.

24 6. Production of Audio / Video Files. The Parties agree to work in good faith to
 25 negotiate a reasonable approach to the production of audio and video files. .

1 7. Non-Responsive Documents Attached to Production-Eligible Documents. In an
 2 effort to avoid unnecessary expense and burden, the Parties agree that completely non-responsive
 3 documents attached to an otherwise production-eligible document can be produced as a single-
 4 page Bates-stamped TIFF image slip-sheet containing the text stating the document has been
 5 withheld as non-responsive.

6 8. Embedded Objects. Some Microsoft Office and .RTF files may contain embedded
 7 objects. Such objects typically are the following file types: Microsoft Excel, Word, PowerPoint,
 8 Project, Outlook, Access and PDF. Subject to claims of privilege and immunity, as applicable,
 9 objects with those identified file types shall be extracted as separate files and shall be produced as
 10 attachments to the file in which they were embedded unless otherwise subject to an exception
 11 provided within this Order.

12 9. Timeframe. The preservation, collection and production obligations of the Parties
 13 as set forth in this Stipulation apply to Documents and ESI generated, received, or created between
 14 January 1, 2015, and the date of filing of the complaint, April 28, 2023, except as otherwise agreed
 15 among the Parties after meeting and conferring in good faith, or upon further order of the Court for
 16 good cause shown.

17 E. **Production Format**

18 1. Non-Redacted Electronically Stored Information Not Produced in Native Form. As
 19 stated in the Stipulated Protective Order, non-redacted ESI should be produced in a form no less
 20 “searchable” than it is maintained in the normal course of the producing Party’s business. ESI will
 21 be produced in single-page, black and white, 300 DPI, Group IV TIFF image file format together
 22 with Concordance or Summation Load Files (OPT or DII files) (depending on the preference of
 23 the requesting Party).

24 2. Conversion of Word documents. When Word documents are converted to TIFFs,
 25 the version that will be converted is as it was last saved and with track changes turned on. This

1 means the images and extracted text will reflect the track changes. In all events, conversion of
 2 Microsoft Office document types to TIFF shall reflect comments, speaker notes, footers, headers
 3 and track changes.

4 3. TIFF Images. TIFF images should show any and all text and images which would
 5 be visible to the reader using the native software that created the document. For example, TIFF
 6 images of e-mail messages should include the BCC line. PowerPoint documents should be
 7 processed with hidden slides and all speaker notes unhidden and should be processed to show both
 8 the slide and the speaker's notes on the TIFF/JPG image. Color originals may be produced in
 9 B&W TIFF format, but either Party may subsequently request, by Bates number(s), a replacement
 10 set of images in color only to the extent that the Requesting Party demonstrates that the loss of the
 11 color detracts from the usability or reduces the ability to understand the information imparted in
 12 the original, however categorical or wholesale requests are deemed invalid.

13 4. Native files. If a document is produced in native format, a single-page Bates-
 14 stamped TIFF image slip-sheet containing the confidential designation and text stating the
 15 document has been produced in native format should also be provided. If documents requested in
 16 native format require redactions, the Parties should meet and confer regarding how to implement
 17 redactions while ensuring that proper formatting and usability are maintained. Each native file
 18 should be named according to the Bates number it has been assigned and should be linked directly
 19 to its corresponding record in the load file using the NATIVELINK field. To the extent either Party
 20 believes that native files should be produced for a specific document or class of documents not
 21 required to be produced in native format pursuant to this paragraph or to the extent records do not
 22 easily conform to native or TIFF format (i.e., structured data), the Parties should meet and confer
 23 in good faith.

1 5. Non- Redacted ESI. Non-redacted ESI shall be produced with searchable extracted
 2 text of the entire Document (at the document level in a .TXT file) and the following Metadata fields
 3 in a Concordance .DAT file, where applicable:

FIELD NAME	SAMPLE DATA	FIELD DESCRIPTION	APPLICABLE FILE TYPE(S)
BEGBATES	ABC000001	Beginning production number or Bates number for a given file/document	All
ENDBATES	ABC000002	Ending production number or Bates number for a given file/document	All
BEGATTACH	ABC000001	Beginning production number or Bates number for the attachment range	All
ENDATTACH	ABC000015	Ending production number or Bates number for the attachment range	All
ATTACHRANGE	ABC000001 – ABC000015	Bates range for the entire document family	All
VOLUME	ABC001	Production volume number	All
CUSTODIAN(S)	Smith, John; Brown, Julie	Custodial source(s) of documents, including documents not produced due to de-duplication.	All
RECORDTYPE	EMAIL, ATTACHMENT, EFILE, HARDCOPY	Type of document	All
FILENAME	Minutes.doc	File name of a document	E-Doc
FILEEXT	.doc, .pdf	File extension of original document	E-mail and E-Doc
PAGE COUNT	3	For documents produced in TIFF form, number of pages in the document. For documents produced in native, page count will be 1 (for placeholder).	All
CREATEDATE	4/5/2012, 12:00 pm	Date and time created for efile	E-Doc
SENTDATE	4/5/2012, 12:00 pm	Date and time sent for emails	E-mail
RECIEVEDDATE	4/5/2012, 12:00 pm	Date and time received for emails	E-mail
SUBJECT	Meeting Minutes	Subject line extracted from e-mail message	E-mail

FIELD NAME	SAMPLE DATA	FIELD DESCRIPTION	APPLICABLE FILE TYPE(S)
AUTHOR	Smith, John	Author of document	E-mail and E-Doc
FROM	Smith, John	Sender of email	E-mail
TO	Jones, Tom; Brown, Julie	Recipient	E-mail
CC	Cain, John	Copyee	E-mail
BCC	Stevens, Lisa	Blind Copyee	E-mail
MD5HASH		MD5Hash of loose files or attachments	E-mail and E-Doc
CONFIDENTIALITY	Confidential, Highly Confidential	Confidentiality designation	All
REDACTED	Yes / No	Field for documents with a redaction	All
FILEPATH(S)			All
TEXTPATH	D:\001\ABC000005.txt	Relative path to document level text file in production deliverable	All
NATIVELINK	D:\001\ABC000005.xls	Path or hyperlink to documents being produced in native file format	E-mail and E-Doc

This list of fields does not create any obligation to create or manually code fields that are not automatically generated by the processing of the ESI or that do not exist as part of the original Metadata of the Document. The Parties acknowledge there can be differences between the Operating System (Windows) and Application date/time fields and also agree the Producing Party has no obligation to try and reconcile the differences, if any.

If documents, such as electronic mail, are produced, the relationship between related documents (e.g., email attachments) should be preserved. All Electronic Documents attached to an email are produced contemporaneously and sequentially immediately after the parent email.

1 Parties may request the production of Documents or ESI in Native form by Bates number in the
 2 event that a Document or ESI produced in TIFF form is illegible.

3 6. ESI to be Produced in Native Form. By default, spreadsheets, audio, and video that
 4 do not require redaction should be produced in native format. If the native format of audio and
 5 video files is not a format recognized by VLC Media Player codecs, the parties shall confer in good
 6 faith regarding available conversions of the file to another playable format. Files produced in
 7 Native Format shall be named either with a sequential Bates number followed by the file name or
 8 with a sequential Bates number followed by the Confidentiality Designation, if applicable, and the
 9 file name. A placeholder TIFF with the original file name, the language “Document Produced in
 10 Native” (or similar language), and stamped with assigned Bates number and confidentiality
 11 designation shall be included for each native file produced. To the extent native files, that are not
 12 audio or video, including electronic spreadsheets, are redacted, production may be made in in
 13 Native Format. Should an audio or video file require redaction, the Parties shall meet and confer
 14 at that time.

15 7. Redacted Documents. The Parties may redact Documents or ESI on the following
 16 bases: attorney-client privilege, attorney work-product privilege, Protected Material and
 17 “Personally Identifiable Information,” “Sensitive Private Data,” or “Nonpublic Personal
 18 Information,” as these terms are defined under federal, and state or foreign data protection laws.
 19 If, during the course of discovery, the Parties identify other kinds of information that any Party has
 20 a reasonable basis for redacting, the Parties will meet and confer regarding it before such redactions
 21 are made. If the issue cannot be resolved, the Parties will seek resolution from the Court.

22 8. Hard-Copy Documents. Hard-Copy Documents should be produced as single-page,
 23 black and white, 300 DPI, Group IV TIFF image file format together with Concordance or
 24 Summation Load Files (depending on the preference of the requesting Party) with coded data
 25 contained in a separate file. The Producing Party shall also provide document level OCR text files

1 to accompany the TIFF format production. The minimum fields for a scanned Hard-Copy
 2 Document record will be BEGBATES, ENDBATES, BEGATTACH, ENDATTACH,
 3 CUSTODIAN, and TEXT, indicating the beginning and ending Bates numbers, attachments ranges
 4 of all documents, the custodian information, and the OCR or Optical Character Recognition text.

5. Document Unitization for Hard-Copy Documents. If a Hard-Copy Document
 6 consists of more than one page, the Unitization of the Document and any attachments and/or
 7 affixed notes shall be maintained as it existed in the original Document, so that each page will not
 8 be split, but instead sequenced and saved together, as they existed in the original.

9. 10. Non-Custodial Documents. For documents and ESI from non-custodial sources,
 11 the Parties shall cooperate to produce responsive Documents and ESI in a reasonably useable
 production format.

12. 11. Searchable Text. The Parties agree that they will produce Searchable Text for all
 13 Electronic Documents and Electronic Data produced. For all non-redacted ESI, the searchable text
 14 will be extracted directly from the native file. Likewise, the Parties agree that they will produce
 15 Searchable Text for all Hard-Copy Documents that have been converted to images. For any
 16 document where text has been redacted, Searchable Text will be provided for the non-redacted
 17 text.

18. 12. Bates Numbering. Each page of a produced image shall have a unique Bates
 19 number electronically “burned” onto the image at a location that does not unreasonably obliterate
 20 or obscure any information from the source Document. Each TIFF image or native file assigned a
 21 Bates number shall be assigned a Bates number that is unique and maintains a constant length
 22 across the entire document production. No other legend or stamp will be placed on the document
 23 image other than confidentiality legends (where applicable) or redactions.

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1 13. No Color. Documents and ESI in color need not be produced in color. A Party may
 2 request by bates-number that a reasonable number of specifically-identified documents be
 3 produced in a color .PDF or .JPG format.

4 14. Foreign Language Documents. To the extent Documents or ESI are produced that
 5 contain languages other than English, in whole or in part, the Producing Party shall produce all
 6 foreign language documents and ESI in the original language. The Producing Party has no
 7 obligation to provide a translation of the Document or ESI or any portion thereof.

8 15. Production Media. Documents shall be produced on CDs, DVDs, USB hard drives,
 9 portable hard drives or through secure file transfer protocols (e.g., FTP) or similar secure electronic
 10 transmission. The Production Media shall be labeled with the Volume Number along with the
 11 Bates Number range(s) of the materials, and where not practicable to do so, may be provided in an
 12 accompanying letter.

13 16. Replacements. All files that are replaced for any reason must be annotated with an
 14 “R” designation appended to the Bates prefix. A cross reference file will be provided identifying
 15 the document’s original Bates and its replacement Bates number.

16 **F. Privilege**

17 1. The Parties agree that the following categories of privileged communications or
 18 documents need not be included in a privilege log: (a) all privileged communications between
 19 counsel (including in-house and counsel of record in this Action) and their respective clients
 20 concerning this action; (b) all communications between an in-house attorney or counsel of record
 21 and their respective clients regarding scheduling, logistics and/or other non-substantive ministerial
 22 matters. (c) all communications regarding litigation holds or preservation collection or review in this
 23 or any litigation.

24 2. Privilege Log. In an effort to avoid unnecessary expense and burden, the Parties agree
 25 that, for documents withheld from production on the basis of attorney-client privilege, work product

1 doctrine and/or any other applicable privilege, the Producing Party will prepare a summary log
 2 containing, for each document (except those exempted above) an export of metadata fields listed
 3 below, as agreed upon by the Parties, to the extent such information exists and has not been
 4 suppressed or redacted for privilege. For email chains being withheld for privilege, the Producing
 5 Party is required only to provide metadata for the top most (or most recent) privilege email. Nothing
 6 in this provision should be interpreted to require the Producing Party to manually import information
 7 that is not otherwise contained in the top line chain of any document appearing on the privilege log.

8 The privilege log export should include the following information from the top line email:

- 9 • BEGNO (if not produced) or BEGBATES (if produced)
- 10 • ENDNO (if not produced) or ENDBATES (if produced)
- 11 • BEGATTACH (if not produced) or BEGBATESATTACH (if produced)
- 12 • ENDATTACH (if not produced) or ENDBATESATTACH (if produced)
- 13 • NUMBER OF ATTACHMENTS
- 14 • CUSTODIAN
- 15 • AUTHOR
- 16 • FROM
- 17 • TO
- 18 • CC
- 19 • BCC
- 20 • DOCUMENT DATE or SENT DATE
- 21 • DOCUMENT TYPE or FILE EXTENSION
- 22 • PRIVILEGE PERSONS
- 23 • PRIV_TYPE

24 3. The Parties agree for documents withheld from production on the basis of attorney-
 25 client privilege, work product doctrine and/or any other applicable privilege, the Producing Party
 26 will prepare a log entry for each document withheld, or in the case of fully withheld document
 families, an individual entry for each document family which asserts the general subject matter of
 the document. Nothing in this provision shall be interpreted to require the Parties to disclose the
 underlying privilege information and/or material when asserting the general subject matter of the
 document.

1 4. The Parties agree and recognize that there may be instances where categories or
 2 groups of documents share a similar or exact general subject matter. Nothing in this provision shall
 3 be interpreted from prohibiting like entries for documents that share a similar or exact subject
 4 matter.

5 5. The Parties agree that for documents redacted on the basis of attorney-client, work
 6 product doctrine and/or any other applicable privilege, the Producing Party does NOT need to
 7 prepare a summary log, or any other log, for each document.

8 6. The Parties agree that the Producing Party need not annotate any log to indicate any
 9 attorneys, but instead each entry shall include a “Privilege Person(s)” field which shall identify the
 10 individual or entity generating the source of the privilege.

11 7. The Parties further agree that this summary log satisfies the Producing Party’s
 12 obligations under Federal Rule of Civil Procedure 26(b)(5).

13 8. If the Requesting Party requires further information, it shall explain in writing the
 14 need for such information and identify, by Bates number or other unique identifier, each document
 15 for which it seeks this information. The Requesting Party must submit its written request for
 16 additional information within Thirty (30) days from the date the Producing Party served the
 17 privilege log. Within thirty (30) days of such a request, the Producing Party must either (i) provide
 18 the requested information or (ii) challenge the request. If a Party challenges a request for further
 19 information, the Parties shall meet and confer to try to reach a mutually agreeable solution. If they
 20 cannot agree, the Parties must request a conference with the Court before any motions may be filed.

21 **G. Production of Privileged or Otherwise Protected Material**

22 1. No Waiver by Disclosure. This order is entered pursuant to Rule 502(d) of the
 23 Federal Rules of Evidence. Subject to the provisions of this Order, if a Party or subpoenaed non-
 24 Party (the “Disclosing Party”) discloses information in connection with the pending litigation that
 25 the Disclosing Party thereafter claims to be privileged or protected by the attorney-client privilege

1 or work product protection (“Protected Information”), the disclosure of that Protected Information
 2 will not constitute or be deemed a waiver or forfeiture – in this or any other federal or state action
 3 – of any claim of privilege or work product protection that the Disclosing Party would otherwise
 4 be entitled to assert with respect to the Protected Information and its subject matter.

5 2. Notification Requirements; Best Efforts of Receiving Party. A Disclosing Party
 6 must promptly notify the Party receiving the Protected Information (“the Receiving Party”), in
 7 writing, that it has disclosed Protected Information without intending a waiver by the disclosure.
 8 Upon such notification, the Receiving Party must – unless it contests the claim of attorney-client
 9 privilege or work product protection in accordance with paragraph (3) – promptly (i) notify the
 10 Disclosing Party that it will make best efforts to identify and return, sequester, or destroy (or in the
 11 case of electronically stored information, delete) the Protected Information and any reasonably
 12 accessible copies it has and (ii) provide a certification that it will cease further review,
 13 dissemination, and use of the Protected Information. Within five business days of receipt of the
 14 notification from the Receiving Party, the Disclosing Party must explain as specifically as possible
 15 why the Protected Information is privileged.

16 3. Contesting Claim of Privilege or Work Product Protection. If the Receiving Party
 17 contests the claim of attorney-client privilege or work product protection, the Receiving Party must
 18 – within five business days of receipt of the notice of disclosure – move the Court for an Order
 19 compelling disclosure of the information claimed as unprotected (a “Disclosure Motion”). The
 20 Disclosure Motion must be filed under seal and must not assert as a ground for compelling
 21 disclosure the fact or circumstances of the disclosure. Pending resolution of the Disclosure Motion,
 22 the Receiving Party must not use the challenged information in any way or disclose it to any person
 23 other than those required by law to be served with a copy of the sealed Disclosure Motion.

24 4. Stipulated Time Periods. The Parties may stipulate to extend the time periods set
 25 forth in paragraphs (2) and (3).

1 5. Attorney's Ethical Responsibilities. Nothing in this order overrides any attorney's
 2 ethical responsibilities to refrain from examining or disclosing materials that the attorney knows
 3 or reasonably should know to be privileged and to inform the Disclosing Party that such materials
 4 have been produced.

5 6. Burden of Proving Privilege or Work-Product Protection. The Disclosing Party
 6 retains the burden – upon challenge pursuant to paragraph (3) – of establishing the privileged or
 7 protected nature of the Protected Information.

8 7. In camera Review. Nothing in this Order limits the right of any Party to petition
 9 the Court for an in camera review of the Privileged Information.

10 8. Voluntary and Subject Matter Waiver. This Order does not preclude a Party from
 11 voluntarily waiving the attorney-client privilege or work product protection. The provisions of
 12 Federal Rule 502(a) apply when the Disclosing Party uses or indicates that it may use information
 13 produced under this Order to support a claim or defense.

14 9. Review. Nothing contained herein is intended to or shall serve to limit a Party's
 15 right to conduct a review of documents, ESI or information (including metadata) for relevance,
 16 responsiveness and/or segregation of privileged and/or protected information before production.
 17 Further, nothing contained herein is intended to reduce the timeframe provided to the Disclosing
 18 Party to complete their review should they choose to do so.

19 10. Proportionality. Nothing contained herein is intended to limit a Party's
 20 proportionality and burden arguments specifically related to the costs to conduct a review of
 21 documents, ESI, or information (including metadata) for relevance, responsiveness and/or
 22 segregation of privileged and/or protected information before production.

23 11. Rule 502(b)(2). The provisions of Federal Rule of Evidence 502(b)(2) are
 24 inapplicable to the production of Protected Information under this Order.

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26 STIPULATED AGREEMENT REGARDING
 DISCOVERY OF ELECTRONICALLY STORED
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 (Case No. 2:23-cv-00630) - 17

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1 STIPULATED TO this 20th day of February, 2024.

2
3 **ALBERT LAW PLLC**

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STIPULATED AGREEMENT REGARDING
DISCOVERY OF ELECTRONICALLY STORED
INFORMATION AND [PROPOSED] ORDER
(Case No. 2:23-cv-00630) - 18

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1 **[PROPOSED] ORDER**

2 IT IS SO ORDERED.

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4 DATED this 21st day of February, 2024.

5 
6

7 THE HONORABLE JAMES L. ROBART
8 UNITED STATES DISTRICT JUDGE

9 Presented by:

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31 STIPULATED AGREEMENT REGARDING
32 DISCOVERY OF ELECTRONICALLY STORED
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34 (Case No. 2:23-cv-00630) - 19

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